

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JESSE CASTILLA, JR.,
(TDCJ-CID #1309710)
Plaintiff,

vs.

ERNESTINE JULYE, M.D., *et al.*,
Defendants.

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CIVIL ACTION H-10-2592

MEMORANDUM ON DISMISSAL

The plaintiff filed a civil rights action on July 20, 2010. Following remand, this court ordered service of process on June 11, 2012. (Docket Entry No. 27). The defendants filed their motion for summary judgment on December 11, 2012. (Docket Entry No. 35). This court's order dated June 11, 2012, instructed the plaintiff to "respond to the defendants' motion to dismiss or motion for summary judgment within forty-five (45) days of the date in which the defendants mailed plaintiff his copy of the additional pleadings, as shown on the defendants' certificate of service. Failure of the plaintiff to respond to the defendants' motions within the time limit may result in dismissal of this action for want of prosecution under Rule 41(b), FED. R. CIV. P."

In a motion filed on February 13, 2013, the plaintiff requested an extension until March 1, 2013 because he was in the process of obtaining the assistance of counsel. On March 6, 2013, this court granted the Plaintiff's Motion for Extension of Time to File Response. (Docket Entry No. 40). This court instructed the plaintiff to file a response to the Defendants' motion for summary judgment no later than March 27, 2013. Again, this court warned the plaintiff that failure to comply as directed may result in dismissal of this action for want of prosecution. (Docket Entry No. 40).

The plaintiff's failure to comply with this court's order of March 6, 2013, forces this court to conclude that he lacks due diligence. Under the inherent powers necessarily vested in a court to manage its own affairs, this court determines that dismissal for want of prosecution is appropriate. *See* FED. R. CIV. P. 41(b); *Link v. Wabash R.R.*, 370 U.S. 626 (1962); *Woodson v. Surgitek, Inc.*, 57 F.3d 1406, 1417 (5th Cir. 1995); 8 J. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 41.51(3)(b) & (c) (3d ed. 2010). Upon a proper showing, relief from this order may be granted in accordance with FED. R. CIV. P. 60(b). *See Link*, 370 U.S. at 635.

This action is DISMISSED without prejudice for want of prosecution. Defendants' motion for summary judgment, (Docket Entry No. 35), is DENIED without prejudice.

SIGNED at Houston, Texas, on July 11, 2013.



VANESSA D. GILMORE
UNITED STATES DISTRICT JUDGE